



The Care Act and its history

Social care and the NHS have always been separate. This division was enshrined in the founding of the NHS in 1946 and the repeal of the Poor Law in 1948. The National Assistance Act enabled local authorities to support disabled people and older people (amongst other provisions). This Act was added to and reformed by other Acts - for carers, most notably by the Carers (Recognition and Services) Act 1995 and the Carers and Disabled Children Act 2000 - regulations, statutory guidance, Local Authority Circulars, as well as case law. Social care law became complex and piecemeal, leading to a patchwork of rights, including those for carers. This was confusing for carers, services which support them, and local authorities alike.

The Law Commission's enquiry - following their scoping report in 2008 and consultation in 2010 - culminating in its final report (2011) was instrumental in echoing calls for the repeal of social care Acts, to be replaced with "*a unified adult social care statute*"¹. Government accepted this call in its 2012 response to the Commission, producing the draft Care and Support Bill that year, before introducing the Care Bill to Parliament in 2013. The Care Act received Royal Assent in 2014, with implementation from 1 April 2015.

The Care Act and carers

Most importantly, the Care Act places carers on an equal footing with those of the person / people they care for. Section 10 (3) of the Care Act defines a carer as:

*"An adult who provides or intends to provide care for another adult ("adult needing care")"*²

The Care Act is based on the principle of promoting wellbeing, preventing needs from developing or deteriorating, and reducing needs that already exist (Sections 1 and 2 of the Act). As the Act applies equally to carers, this means that the wellbeing principle and prevention duty applies to carers too. Wellbeing has a wide definition, encompassing physical and mental health, emotional wellbeing, and the ability to take part in work, education and have a role in society. The prevention clause means that Local Authorities must make sure there are "*services, facilities or resources*"³ which prevent or delay carers' support needs.

¹ http://www.lawcom.gov.uk/wp-content/uploads/2015/03/lc326_adult_social_care.pdf

² Section 10 (3), Page 10, http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf

³ Section 2 (1), Page 2, http://www.legislation.gov.uk/ukpga/2014/23/pdfs/ukpga_20140023_en.pdf

These clauses link into the other universal provisions and duties of the Care Act which also apply equally to carers. Information and advice (Section 4) being another duty that has a link to prevention – a local authority must make sure there is information and advice about how care and support works in the area, what choices there are, how to access this care and support, and independent financial advice. This also links into making sure there are enough services, and of sufficient quality, in the local areas aka Market-Shaping (Section 5). Advocacy (Section 67) to carers must also be provided, where needed.

The Local Authority must offer assessments to those it thinks are in need of one, they need not wait for a carer to request one (and in theory, a carer need not request an assessment). Carers are entitled to an assessment of their own needs (whether or not the person they care for wants an assessment of their needs), no matter how much or how little support the carer is providing. The assessment must look at whether the carer is able to provide care, if they are willing to do so, the impact of the carer's need for support on their wellbeing, what outcomes the carer wishes to achieve, and if support could help the carer achieve those outcomes. Carers need no longer prove that they are providing "substantial" or "regular" support. Under previous legislation, this test was interpreted differently by each Local Authority, and in many cases required a "pre-assessment" before carers even got to the assessment stage.

If the assessment shows carers need it, carers are entitled to support in their own right, although support for the person they care for may reduce this need for support.

Carers may be charged for their own support (following both a needs assessment, and a financial assessment); although the statutory Guidance strongly suggests that charging carers for their own support is both a false economy and inefficient.

*8.50 "Local authorities are not required to charge a carer for support and indeed in many cases it would be a false economy to do so."*⁴

And

*8.51 "While charging carers may be appropriate in some circumstances, it is very unlikely to be efficient to systematically charge carers for meeting their eligible needs."*⁵

The guidance is emphatic that carers may not be charged for support for the person with care and support needs:

*8.49 "...a local authority **must not** charge a carer for care and support provided directly to the person they care for under any circumstances."*⁶

Young carers (this includes siblings) are entitled to an assessment under the Care Act to see what support they might need after they become 18 (Sections 63 and 64), and if the assessment shows this is needed, offer services and support to the carer,

⁴ <https://www.gov.uk/guidance/care-and-support-statutory-guidance/charging-and-financial-assessment>

⁵ <https://www.gov.uk/guidance/care-and-support-statutory-guidance/charging-and-financial-assessment>

⁶ <https://www.gov.uk/guidance/care-and-support-statutory-guidance/charging-and-financial-assessment>

and the person they care for. The statutory guidance also instructs local authorities to ensure these transition assessments *“must consider how to support young carers to prepare for adulthood and how to raise and fulfil their aspirations”* (16.23) ⁷, and outline what support they can offer to the person the young carer is supporting if the young carer were to go away to university. The local authority must also work with them to *“identify a suitable institution as part of transition planning... Once an offer has been accepted, local authorities should ensure the relevant institution is made aware as soon as possible of the young person’s or carer’s needs and desired outcomes and discuss a plan for meeting them.”* (16.77) ⁸. And (16.79) *“The objective should be to ensure that there will be an appropriate package of care and support in place from the day the young ... carer starts at the institution”*.

Parent carers are also entitled to a transition assessment for after their disabled child becomes 18, and a support plan if they are found to be eligible for support. (Sections 60 and 61)

⁷ <https://www.gov.uk/guidance/care-and-support-statutory-guidance/integration-and-partnership-working>

⁸ <https://www.gov.uk/guidance/care-and-support-statutory-guidance/integration-and-partnership-working>